United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Thursday, November 12, 1970

Before

Hon. Luther M. Swygert, Chief Judge
Hon. Roger J. Kiley, Circuit Judge
Hon. Thomas E. Fairchild, Circuit Judge

United States of America,
Plaintiff-Appellee,

No. 18295 vs.

David Dellinger, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

ORDER

This matter comes before the court on appellants' motion to supplement the record by filing affidavits, taking depositions, or ordering a district court hearing, the appellee's answer, and appellants' reply.

On consideration whereof, It Is Ordered that the case be remanded to the district court for a hearing limited to the following areas:

(1) The contents of and the circumstances surrounding the communications, if any, between the trial judge and the jury during its deliberations and outside of the presence and without the knowledge of appellants and their counsel.

(2) The contents of and circumstances surrounding any communications by the marshals and other officers in charge of the jury during its deliberations, which may arguably have interfered with the jurors' exercise of impartial judgment.

At the hearing, both appellants and appellee may subpoena witnesses, who shall be limited to the jurors and to the deputy marshals who were in charge of the jury during its deliberations. The district judge may if he desires incorporate into the record his own recollections of the events relating to such communications, if any.

The hearing shall be held at the earliest possible date, to prevent any delay in the appeals now before us. A transcript of the hearing shall then be certified to this court as a supplement to the record on appeal.

Except as herein granted, the motion of appellants is denied.